

# Squibb (E. R.)

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## PROPOSED LEGISLATION

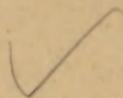
ON THE

# ADULTERATION OF FOOD AND MEDICINE

BY

EDWARD R. SQUIBB

OF BROOKLYN



ROUGH DRAFT OF A PROPOSED LAW TO PREVENT THE ADULTERATION  
OF FOOD AND MEDICINE, AND TO CREATE A STATE BOARD OF  
HEALTH, WITH EXPLANATIONS AND ILLUSTRATIONS  
OF THE PRINCIPAL POINTS OF THE LAW

Reprinted from "The Transactions of the Medical Society of the State of  
New York," for 1879

## NOTES IN REPLY TO CRITICISMS BY THE PRESS

THE BRITISH "SALES OF FOOD AND DRUGS ACT OF 1875"  
WITH NOTICES OF SOME RULINGS OF THE BRITISH COURT

NEW YORK  
G. P. PUTNAM'S SONS  
182 FIFTH AVENUE

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## P R E F A C E.

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IT is self-evident that a law to be most effective in preventing the adulteration of food and medicine should be general or national in order to secure universality and uniformity of action, and to prevent the transfer of the sources of adulterated articles from States having preventive laws to States having none; or from States having good laws, well enforced, to States having imperfect laws, or laws imperfectly carried out.

It is equally evident that, under the form of government of this country, an United States law for such purposes is inadmissible.

Therefore, the only wise course appears to be to thoroughly, temperately, and widely investigate and discuss the subject throughout the nation; and by proposed laws and criticism upon them, to bring out all the difficulties to be met by such laws, and the best way to meet them.

Then, if from such material and such knowledge, a good law, or the best practicable law, could be drawn up, little or no effort would be needed to get all the

States to enact it, starting from some large State like New York, where it is most needed. In this way the effect of a general law would be easily and finally obtained, while the objections to an United States law would not be encountered.

With the purpose of aiding in this or any other plan whereby the object may be best attained, the following propositions are submitted.

E. R. SQUIBB.

BROOKLYN, March 4, 1879.

ROUGH DRAFT OF A PROPOSED LAW  
TO PREVENT  
THE ADULTERATION OF FOOD AND MEDICINE,  
AND  
TO CREATE A STATE BOARD OF HEALTH.

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BY E. R. SQUIBB, OF BROOKLYN.

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*To the Medical Society of the State of New York:*

THE subject of a law to prevent the adulteration of Food and Medicine has throughout the past year been under consideration by a joint committee made up of representatives from the New York Academy of Sciences, the New York Academy of Medicine, New York County Medical Society, the Therapeutical Society, New York College of Pharmacy, New York Medico-Legal Society, the Public Health Association, and the American Chemical Society, and considerable time has been devoted to the examination of the subject; and two or three drafts of laws besides this have been prepared and submitted to discussion.

After a review of some part of the experience of Great Britain under the "Sale of Food and Drugs Act" of 1875, and a consideration of the chief difficulties it has encountered up to this time, the present writer believes that any law, to be effective and of easy application, must carefully avoid certain points of difficulty which have been brought out by the British law.

*First.* The law must so clearly define the offense of adulteration in all its various forms, even by repetition in wording the definition where this may be useful, as to make the various forms of the offense plain to the understanding of the persons who adulterate, rather than by general definitions to leave too much to be decided only by litigation in the courts. If the offense be well defined to the person who adulterates, the first effect will be to prevent or deter him. Failing in this, it will make the facts establishing the offense so clear as to economize the time of the courts and law officers, and leave to them to decide mainly upon the character, turpitude, and degree of the offense charged, and thus adjust and apply the penalty. Hence, in the draft of a law here presented, the defining clauses might be construed by the careful logic of a legally trained mind as mainly repetitions of one idea. Yet to the minds of the class of shrewd money-makers in the community, to whom, and to whose practices the definitions are really addressed, the looseness of a general phraseology would fail in deterring them from taking the chances of dis-

covery and conviction. And again, under this head, and for these same reasons, the standards for comparison by which the offense is to be determined, should be a part of the law, and be much more definite than by the British law.

To illustrate the utility of careful and clear definitions of various known forms of the offense as aimed at by the different defining clauses, one or two typical instances of common adulterations are given in the margin of each defining clause to show its special application.

*Secondly.* The questions of intent to defraud, and of injury or prejudice to the purchaser of adulterated articles, either as to health or to cost, are carefully avoided, because in a definite, fully recognized shape they are often entirely wanting in the adulterator, and are always difficult to prove. A very large proportion of the adulterations practiced are not attempts at fraud, nor designed to damage health, but are straining efforts to make money. And these efforts are so earnest and so intense, energetic, and absorbing as to leave all other considerations in the background. That the public is hurt and cheated is often but an accident rather than a malicious intention.

In place of these, the adulterator is made responsible for the effects of his acts in their more definite and physical relations to the public, and to the penalties imposed upon them. The offense then consists in the act of de-

basement, which is so easily proven by the debased article. And a pleading of absence of intent to defraud, or of the harmless character of the debasement to the individual purchaser, would simply amount to a plea of ignorance of the effects of the offense, and would influence the courts—not so much on the question of conviction, because the public offense of debasement has been committed—but simply as to the extent to which the adulterator should suffer, in order to prevent others from similar acts through similar ignorance.

*Thirdly.* The making it the duty of the consumer who may be injured to prosecute the offenses, using the inspectors merely as witnesses in the prosecutions, has been carefully avoided; because it has been found that very few persons have either the inclination, time, or money to give to such prosecutions; and that it is much cheaper for individuals to suffer than to prosecute.

Neither has it proved more effective to place the duty of prosecuting upon institutions or societies, giving them the fines or other emoluments in compensation, because in this way the work has rarely, if ever, been effectively done.

Hence, any law of this kind, to be reasonably effective, must embrace provisions for its own thorough and complete execution from beginning to end.

Then the organization necessary to carry into effect any such general and important law, of so great necessity and so wide an application, must be of exceptional

and peculiar fitness, and, therefore, be very expensive, because it must consist of experts of a high order and especial training.

But just such an organization as would be necessary for such a law, is now almost equally necessary for many other important objects in connection with the public health interests of every State. That this State should have been so long without such an organization, when the experience of neighboring States all around has been so unequivocal in regard to the advantages obtained, is, at least, a remarkable fact.

In consideration of this fact, it seems to this writer that no better time for the creation of a State Board of Health could be proposed than in connection with the enactment of a law to prevent adulterations, leaving to future laws the various other not less important duties which might be performed by a State Board of Health, as in the instances of Massachusetts, Michigan, and many other States.

The need for some such law as this is now so evident as to require no argument; and the advantages of State boards of health can—in view of the experience of many States—be no longer doubtful, even when no such law as this is among the duties of such boards. But whether this State would be justified in enacting so expensive a law, thereby increasing the taxes upon an already over-taxed population—that is, whether such a law would or would not be a true and wise measure of

economy, is not so easily seen, and requires careful thought and consideration. By a very rough estimate, based on the manufacturing and mercantile interests of the State, the losses to the population through practices of carelessness and adulteration, through over-competition and greed for money-making, which such a law is intended to check and finally prevent, cannot be less than seven hundred thousand dollars per annum, though probably much more. Then, assuming the population of the State at five millions (recently given as 4,995,000), the loss per capita per annum cannot be less than fourteen cents. The State Board of Health here contemplated would cost the State about eighty thousand dollars a year, without trusting to fines or emoluments to reimburse any part of such cost. This would add one and six-tenths cents to the taxes per capita per annum in order to try to save fourteen cents. But suppose such a Board should succeed in preventing only one-fifth of the estimated losses by adulteration, or two and eight-tenths cents per capita per annum, it would still be a public economy of over eight per cent. per annum on a public debt which is neither unseen nor unfelt, though very much neglected by the working classes who suffer most by it.

If such a line of argument be admitted, it is easy to see that the enactment of such a law, with such provision for its thorough execution, would be wise and economical at any time.

Laws are effectual, and therefore of use, just in propor-

tion to the means which they provide for their own thorough execution; and any law against such offenses as adulteration which would not have full power within itself to enforce its provisions and penalties, might cost little, but would certainly be useless, and if useless, would be hurtful by debasing and diluting the public respect for law.

The rough draft of a proposed law which is herein submitted to the Medical Society of the State of New York, was drawn up for presentation to the joint committee above alluded to, and will probably be presented to that committee before it is presented to this Society. But it is a matter of great interest and importance to this Society, and if placed before the Society's constituency throughout the State by means of the volume of "Transactions," it will doubtless attract some of that attention which the importance of the subject deserves; and may assist in obtaining some such law from the Legislature.

The writer has for many years past given much attention to the subject of adulterations; and has pretty carefully watched the laws that have been enacted at home and abroad to try to check and control this rapidly increasing and insidious public evil; and having become somewhat familiar with some of the very great difficulties that have been developed by the operation of the various laws, he has drawn up this draft to meet and overcome those which seemed most prominent. He has, therefore,

what is believed to be a good practical reason for every provision here asked for in such a law, and can explain the objects of the provisions if need be, by instances of deficiency or failure in former laws. Yet it is not pretended that this draft is anything like as complete and as well drawn as it should be. Some legally trained mind should examine analytically all the convictions and failures to convict, which have occurred under the British law of 1875, and all the discussions and recommendations of the British Society of Analysts charged with the execution of that law. And also the report of a commission of the German Empire charged with making investigations during two years past with a view to a law for Germany.

The British plan seems to have been to modify one law after another through a series of years, making each new law an improvement on the one preceding it; and a committee of Parliament is understood to be now engaged in amending the act of 1875 in view of recent rulings and decisions of the courts. If now this State could take full advantage of that prolonged experience by sending a trained expert to examine it carefully, as Germany did, a proper law might doubtless be framed that would be far more efficient than anything that could possibly come from such inexpert efforts as these of the present writer. In this country and in others, much time has been lost to this subject by hasty enactments passed without full knowledge of the difficulties to be

met, and without full investigation of what had been already done in the way of attempts and failures, or, without providing effective means for enforcing the laws thus passed.

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AN ACT to prevent the adulteration of food and medicine by discovering and punishing the offense: and to repeal all other acts or parts of acts in conflict therewith. And to establish a State Board of Health.

*Whereas* the public welfare is injured by the adulteration of food and medicine—and, whereas the practices of adulteration are increasing, and are not easily detected by the masses of people most injured by them; therefore,

Be it enacted by the People of the State of New York through their representatives in the Legislature,

*First.* That for the purposes of this law the term "food" shall include every article used for the food and drink or in the food and drink—of man and animals.

*Second.* That the term "medicine" shall include every article, other than food and drink, that is used for the preservation of health, or for the relief or cure of disease, in man and animals, including antiseptics and disinfectants and cosmetics.

*Third.* The standards by which the offense of adulteration shall be judged, or the degree in which the offense may have been committed, shall be—

For simple articles of food, a fair average quality of the substances in their natural condition; or as best prepared by drying, grinding, packing, etc., without damage, from their natural condition.

For compound articles of food, the publicly known formulas or patents whereupon they should be compounded, or the labels or descriptions attached to the compounds as given, sold, offered, or held in possession.

For simple articles of medicine, the standard shall be the United States Pharmacopœia for all articles embraced by that authority. For articles not so embraced the national pharmacopœias of other countries.

And when not embraced in these, some commonly accepted standard authority. For compounded articles of medicine, the same standards as above cited for simple articles, for all which they may embrace. For all other compound medicines the standards shall be the formula or recipe attached to the compound by label or otherwise when given, offered, or held in possession; or the physician's prescription or recipe by which it shall have been compounded; or the patent or recipe to which the name or trade-mark of the compound applies. In the case of proprietary or private compounds the constituents of which are legally held as secrets, the testimony of the owners of the private formulas shall be accepted as evidence of the character of the compound.

*Provided*, that nothing herein contained shall be construed so as to protect or permit the issue of any com-

pound which contains any poisonous or hurtful ingredients not publicly stated and professed by the label attached to the compound when given, sold, offered, or held in possession.

EXAMPLES GIVEN  
FOR ILLUSTRATION.

Alum in Baking Powder;  
Lead in Cosmetics;  
Iissi: powerful drugs in Patent Medicines.

*Fourth.* For the purposes of this law, the offense of adulteration shall be as follows:

*1st.* The adding of one or more substances to another or others whereby the strength, purity, quality, or true value of the resulting substance or mixture is reduced or lowered in its nature or composition, with the effect of tending to deceive the public by lowering such substance or mixture from its original and true value, or altering the public significance and common meaning of the name by which it is, or was, originally known or used.

Corn Meal in  
Flour, Chickory,  
etc., in Coffee;  
Torta Alba in  
Cream of Tartar;  
foreign substances  
in Powdered  
Opium.

*2d.* The substitution of one substance for another, either wholly or in part, with the effect of tending to deceive or mislead the public or any part thereof.

Artificial Wines  
and Liquors and  
Mixtures; Artificial  
Mustard; Powdered  
Colocynth Seed  
for Cocolcynth.

*3d.* The abstraction of any part of any substance with the effect that the separation shall reduce the value of the substance, and thus tend to deceive or mislead by changing the common significance of the name by which, as a whole, the substance was originally applied to use.

Cream from  
Milk; partly  
extracted Coffee,  
Tea, and  
Drugs; Thymol  
from Oil of  
Thyme.

*4th.* The application of a name commonly known or understood to indicate any sub-

Oleomargarine  
for Butter; Pos-  
tat; Starch for  
Arrow-root;

Dead Oil for  
Carbolic Acid.

stance to any part or parts thereof, or to any other substance, with the effect of tending to deceive and mislead.

Dirt in all food  
and medicine.  
Metallic salts  
in canned pro-  
visions.

**proportion.**

Damaged  
wheat in Flour.  
Garden Rhu-  
barb in Medi-  
cinal Rhu-  
barb.

Diluted Milk,  
Vinegar, Li-  
quors, and  
Medicines.

sold, or used as though it was not debased or diluted.

Coloring and  
polishing of  
green Coffee.  
Powdering and  
coloring of  
damaged Drugs.  
Bread from  
damaged or  
mixed flour.  
"Large"  
Bread of short  
weight.

**8th.** Any coloring, coating, polishing, or powdering, or any other alteration in the physical condition or sensible properties of any substance, with or without addition to, or subtraction from it, whereby damage is concealed, or it is made to appear better or greater than it really is, either in quality, weight, or measure; or whereby impurities or defective quality are partially or wholly masked or hidden, with the effect of tending to deceive or mislead.

**9th.** The giving or selling, or offering for sale, or the possession of any adulterated article by any person whose business it is to make or to deal in articles of

food or medicine, shall be *prima facie* evidence of the offense of adulteration.

Provided that it be, and it is hereby declared to be, the sole and entire object and intention of this law to protect the public against deception and fraud in the cost and quality of food and medicine through adulteration. And all the provisions of this law shall be construed and applied in accordance with its sole object, by the rules of common law.

No person shall adulterate, nor cause nor permit any other person to adulterate, any article of food or medicine under a penalty in each case not exceeding two hundred dollars fine for the first offense. But every offense after a conviction for a first offense, shall be a misdemeanor, for which, on conviction, the person shall be imprisoned with hard labor for a period not exceeding six months.

No person shall give or sell, or offer for sale, or hold under the ordinary conditions of salable commodities, any adulterated article of food or medicine, under the same penalties as in the preceding section.

No person shall give or sell, or offer for sale, or hold under the ordinary conditions of salable commodities, any article of food or medicine which may have become, through natural or accidental causes, deteriorated or adulterated so as to be unfit for common use, under the same penalties as in the preceding section.

For the proper execution of this law, and for other purposes in connection with the public health, there shall be formed within eighteen months after the passage of this law, a State Board of Health, to consist of five members to be appointed as follows:

Within one week after this act becomes a law, the Governor shall invite the Medical Society of the State of New York, through its president, to nominate through its nominating committee, four prominent physicians who may or may not be members of the Society. He shall also invite the Faculty of Columbia College, through its president, and the Faculty of Cornell University, through its president, each to nominate one expert chemist and physicist. He shall also invite the Bar Association of New York, and the Medico-Legal Society of New York, each to nominate, by a committee raised for that purpose, one expert lawyer. From these eight nominees the Governor shall select and appoint, with reference solely to their fitness for the duties involved, two physicians, one chemist and physicist, and one lawyer; and upon his own motion, he shall select and appoint one business man, who shall be or shall have been an experienced merchant or manufacturer; and these on being sworn in shall constitute the State Board of Health, and as such be empowered to sue and be sued, and do all other acts, etc., for the due execution of the laws with which they may be charged.

In case of the failure of any or of all the bodies in-

vited by the Governor, to nominate at their next succeeding regular meetings, it shall then be the duty of the Governor to invite nominations or suggestions from any other competent prominent public bodies or individuals, whose especial training and knowledge of the fitness of experts for such duties is likely to be found, and to select and appoint any or all the remaining members from such nominations or suggestions, as in his judgment shall be best for the interests and welfare of the State.

Thus constituted the Governor shall call the Board together, and shall appoint from their number a temporary President and Secretary. The Board shall then organize and proceed to a consideration of its duties, and of a plan for carrying out the provisions and intent of this law in detail. Then after due deliberation, it shall elect by ballot, from its own number, a President of the Board to hold office during the pleasure of the Board, by annual elections. The Board shall then select and appoint, not from its own number, a Secretary who shall, under the direction of the Board or its President, perform all the duties of Secretary, Treasurer, and Executive Officer of the Board.

This State Board of Health may, by a majority vote, at any time, report to the Governor of the State any changes in its membership that such majority may desire, and the Governor shall proceed forthwith to make such changes in the way prescribed for the original construction of the Board.

The offices of the State Board of Health shall be located in the city of New York, and the Board shall be authorized to procure the necessary rooms, furniture, apparatus, and books, and to employ the clerks, messengers, and laborers that may be necessary. The business meetings of the Board shall be held, not less frequently than once a month; and three members shall constitute a quorum for the transaction of business.

As soon as the State Board of Health shall have completed its permanent organization and have matured its plans of operation, and within three months after its appointment, it shall by public advertisement issue proposals for competitive examinations to be held by the Board at such times and places as may be deemed best, for obtaining subordinate officers for the Board. By such competitive examinations the Board shall determine the qualifications of any number of persons to execute the various provisions of this law, by rules and regulations adopted by the Board.

From the number of persons thus found qualified, the Board shall then select, constitute, and appoint a Board of Inspectors of Food and Medicine, to consist at first of not less than seven members—or one for each half million of inhabitants of the State, said number to be increased from time to time as experience in the requirements of the law may indicate. The members of this subordinate Board shall hold office at the pleasure of the State Board of Health; and removals and vacan-

cies of all kinds shall be filled in the way prescribed for the original construction of the Board of Inspectors.

The State Board of Health shall at the same time, and in the same way, select by competitive examination from the profession of law, any number of persons qualified legally to enforce the provisions of this law. From the persons thus found qualified, the Board shall select, constitute, and appoint a Board of Prosecution, for legally enforcing the provisions and intent of this law, by securing punishment of the offenses committed under it. This Board of Prosecution under the Food and Medicine Act, shall consist at first of not less than four members; one for the western, one for the middle, and two for the eastern parts of the State, and its members shall hold office during the pleasure of the State Board of Health; and all vacancies in it shall be filled in the way prescribed for the original construction of the Board.

The duties of the Inspectors of Food and Medicine shall be to discover the offense of adulteration and obtain evidence thereof by systematic methods to be established by the State Board of Health—and to serve as witnesses in the prosecutions of the offenses by the prosecuting officers before the courts.

For the purpose of discovering adulterations of Food and Medicine, and obtaining competent evidence of the offenses, said inspectors shall each obtain and examine carefully not less than ten articles of Food and Medi-

cine each week, and keep a full record of the dates, methods, and results of each examination.

Each inspector shall cause it to be publicly known in his district that he will receive, for a moderate charge to be fixed by the State Board of Health, all complaints of suspected adulterations, and will investigate such complaints if need be, by the same methods as may be directed for the examinations made on his own motion. And he shall keep a full record of all complaints that may be made to him, and of his proceedings in each case, for presentation to the State Board of Health.

The Board of Inspectors shall hold meetings at stated times, not less frequently than semi-annually, to compare the experience of the members in their duties, and to secure improvement and uniformity in their methods of proceeding; and to preserve a concert of action throughout the State. And the Board shall report the proceedings and its recommendations to the State Board of Health for reconsideration and action.

The Board of Prosecution under the Food and Medicine Act, shall hold meetings at stated times, not less frequently than semi-annually, for the same purposes as the Board of Inspectors, and shall report their proceedings and recommendations to the State Board of Health in the same way. Each member of the Board of Prosecution for his own district shall receive from the State Board of Health all cases that the State Board shall order to be prosecuted, and shall prosecute all such

cases in the name of the people of the State in the proper courts of law, following each case to its proper legal issue by the methods and rules of procedure in use by district attorneys. And each shall preserve a careful record of each case referred to him and report the results to the State Board of Health.

The State Board of Health shall at its discretion provide office room, furniture, and attendants for its inspectors and law officers in their various localities.

Each member of the State Board of Health shall receive an annual salary of two thousand dollars, and the President of the Board shall receive one thousand dollars additional annual salary:

Provided that any member who fails to attend any meeting of the Board, or any part of any meeting, shall forfeit and lose one-twelfth part of the annual salary to which he may have been entitled, for every such meeting or part of a meeting which he may have failed to attend.

The Secretary of the State Board of Health shall receive an annual salary of three thousand dollars:

Provided that he gives his entire time and labor to the service of the Board: and provided that for any part of his time in which he does not do the duties of his office, he shall not receive the pay.

Each member of the Boards of Inspectors, and of Prosecution shall receive an annual salary of four thousand dollars:

Provided that he shall be prohibited from entering into any other business or occupation than that of the State Board of Health: and provided that he shall receive no perquisites nor fees, nor any other compensation of any kind whatever; but shall give his entire time and service to the State Board of Health for the annual sum of four thousand dollars. And provided further that all time lost from any cause, shall be deducted, pro rata, from his annual salary.

All authorized expenses and expenditures of the State Board of Health shall be audited and paid from the State Treasury upon the vouchers of the President of the Board in the same manner and by the same rules as the expenses of the State courts are paid.

All fines and receipts of money from whatever sources, collected or received under the provisions of this act, shall be paid into the State Treasury semi-annually by the President of the State Board of Health.

On the 30th day of November of each year, the State Board of Health shall report its proceedings for the year to the Governor of the State, said report to be transmitted by the Governor to the next succeeding session of the Legislature, with such comments or suggestions as the Governor may see fit to make.

BROOKLYN, January 10, 1879.

## NOTE.

When the foregoing propositions were discussed by the public press, some points were made which deserve attention.

The *Journal of Commerce* asks, in substance, how the estimated losses to the State of \$700,000 per annum were obtained. In the paper it is stated as a very rough estimate. Perhaps it should have been stated as a guess. For although made by figures, it is as easy to guess by means of figures as without them. The basis for the guessing was :

*First.* The importations of terra alba and some other substances used mainly or entirely for adulteration.

*Second.* The production of sulphate of barium, ultra marine, etc.

*Third.* The testimony given before the Commissioner of Revenue as to the quantities of alcohol used for making artificial wines and liquors.

*Fourth.* The amount of "faced," "damaged, and doctored" coffee and tea sold in the common markets.

*Fifth.* The amount of damaged and inferior grain sold.

*Sixth.* The quality of a large proportion of the bread, milk, butter, and cheese sold in the markets.

*Seventh.* The manufacture of "oleomargarine" and lard from offal fats.

*Eighth.* The amount of articles of food and medicine sold below the cost of production from fair materials.

*Ninth.* The amount of artificial and adulterated spices and other condiments sold.

*Tenth.* The diluted and doctored syrups, vinegar, etc., from bad materials, sold.

*Eleventh.* The adulterated ground coffee, the wet and dirty sugars, etc., exposed for sale.

*Twelfth.* The amount of low grades of drugs imported, such as rhubarb, jalap, etc., sold chiefly for powdering and for adulterating better grades.

The sum of these divided by the distribution to other States from this State as a center of distribution, gives an imaginary quotient for home or State consumption, which can hardly be less than a million of dollars. But to guard against tendency to overstate such estimates, this sum was discounted down to seven hundred thousand dollars, and was then carefully guarded as being a very rough estimate.

In the *New York Times*, of February 6th, a criticism is made of an "important omission" in the suggested plan to consider that a part of the fines and emoluments accruing under such a law, might be made to pay for its execution by being given to the examiners who should prosecute for and prove the offenses. This would be, in effect, to adopt one form of moiety detective system used to prevent frauds in the payment of duties, and would embrace all the odious and objectionable features

of that system in application to a use which presents still greater difficulties to be overcome. The *Times* thinks that instead of an "army of inspectors" (seven or eleven proposed), "an accessible expert should be provided, invested with this duty of examining samples submitted to him by consumers, without expense to them," and the expert's testimony should constitute sufficient cause for the issue of a warrant, etc. "Such experts need not of necessity be salaried men, but may be compensated by a definite fee for each conviction, the consumer receiving payment as a witness, at such rates as shall fairly compensate for the time expended, or being entitled to a certain portion of the fine imposed." The *Times* does not seem to be aware that laws of this general character, but without the odious moiety element, are at present in force, and that had such been effective in any moderate degree, further legislation would not be needed. The fact, if it be admitted, that adulteration is practiced and is on the increase, in the face of such laws, is a sufficient answer to such a line of argument. But good reasons why such laws are ineffectual are known by experience in this and other countries, and it is the force of such reasons, and not a mere desire to tax a community with an expensive organization, which is the basis of the law here proposed. Every consumer is not entitled to have his complaints investigated without expense to himself, for if he was, the complaints would be too numerous and too frivolous for

any reasonable number of experts. Then, all experts are not entitled to equal weight in such examinations. And when each expert gets fees in proportion to the number of convictions obtained through his testimony, that testimony becomes questionable from that circumstance, and appeal must be had to other experts. And if the adulterator be as able and as wealthy as they often or generally are, and if the consumer and the expert be as poor in knowledge and in money as they generally are, the proceedings must be abandoned, or can only be settled by the highest court. The fact that the wealthy and the educated classes suffer least from adulteration, because they pay high prices for their supplies from good sources; and that it is the middle and lower classes who suffer most, while least able either to prosecute or to obtain proper experts, or to carry up cases from court to court; and the fact of the existence of a Court of Appeals, with an ever-crowded calendar, seem to be sufficient as arguments for the most able, most independent, and most definite organization that can be devised for the execution of such a law, because it is the celerity and certainty of conviction and punishment which deters, and this certainty and celerity depends mainly upon the avoidance of mistakes and errors in experts and proceedings. That is to say, with the ordinary consumer's complaint, the ordinary expert's testimony, and the ordinary legal management under such difficult laws, the punishment is neither certain nor

prompt. Hence offenses and cases multiply instead of diminish, and able and wealthy defendants pay for a higher order of expert and legal skill, and carry up the cases to the court of last resort. And, as this is done with success, the law is proportionally weakened. Where a prevalent offense like adulteration engages a high order of ability, skill, knowledge, shrewdness, and cunning in its practices, and by its successes is enabled to secure the highest order of expert and legal talent in its defense, it is certainly useless to attempt to meet it with any such plan as that proposed by the *Times*, or with anything short of a complete and definite organization of superior expert skill and training. Then, as a superior and special quality of expert knowledge, skill, and training will, as it should, always command a high price for its labor, the salaries of four thousand dollars a year for the expert services do not appear disproportionate to the quality of the services required, since such services will always be found on the successful side of such a difficult class of cases. Again, the ordinary expert appointed without salary, who must gain a precarious and speculative livelihood from the success of doubtful prosecutions, overwhelmed with unintelligent complaints, could have neither the education, the ability, nor the time to give to the slow and careful, though necessary microscopic, spectroscopic, and chemical investigations required. And again, without a very careful selection and control of the experts to be used, there

would be a liability to fall upon enthusiasts, as Great Britain has often done, who see offenses everywhere, and so misapply their indiscriminate zeal as to bring up erroneous and unwise and unimportant issues, in which they are repeatedly and very properly beaten, very much to the discredit and injury of the law.

The salaries proposed for the members of the State Board of Health may appear high when judged by the amount of the work imposed. But when the quality of that work is taken into consideration, and it is remembered that there is an immutable natural law which adjusts quantity and quality of labor to compensation, it will probably be conceded that the salaries are not too high for the ability needed. This Board must be superior to its subordinate Boards in education, knowledge, talent, and judgment; and, indeed, in everything except in the manual dexterity and training, and the familiarity with details, which are only acquired by continuous and concentrated exercise and application. Hence, as implied in its mode of selection, it must be of the very highest order of fitness for the work, in order to give this same character to the entire organization, and through this to the very important interests involved in its operations.

And again, the execution of this law is by no means the only duty, and, perhaps, even not the most important duty contemplated for this State Board of Health. This law, once fairly in operation, the Board would, per-

haps, first be charged with the hardly less important subject of vital statistics, and then from time to time with all the other important sanitary interests of the State, such as are now imposed upon State Boards of Health in other States.

In this way the quantity as well as the quality of the services required would soon reach to or overbalance the moderate compensation proposed ; while, if the compensation offered be not liberal and equitable, it will not command the quality of service required.

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In order to afford as complete a view as possible of the subject of legislation on the adulteration of Food and Medicine at the present time, it may be useful to append a copy of the British Law, and give two or three typical illustrations of rulings under it in British courts :

SALE OF FOOD AND DRUGS, §§ 38 & 39 VICT.  
CHAP. 63.—A.D. 1875.

ARRANGEMENT OF CLAUSES.

CLAUSE.

1. Repeal of Statutes.
2. Interpretation of words.

DESCRIPTION OF OFFENSES.

3. Prohibition of the mixing of injurious ingredients, and of selling the same.

4. Prohibition of the mixing of drugs with injurious ingredients, and of selling the same.
5. Exemption in case of proof of absence of knowledge.
6. Prohibition of the sale of articles of food and of drugs not of the proper nature, substance, and quality.
7. Provision for the sale of compounded articles of food and compounded drugs.
8. Protection from offenses by giving of label.
9. Prohibition of the abstraction of any part of an article of food before sale, and selling without notice.

#### APPOINTMENT AND DUTIES OF ANALYSTS, AND PROCEEDINGS TO OBTAIN ANALYSIS.

10. Appointment of analysts.
11. Town council of a borough may engage the analyst of another borough or of the county.
12. Power to purchaser of an article of food to have it analyzed.
13. Officer named to obtain a sample of food or drug to submit to analyst.
14. Provision for dealing with the sample when purchased.
15. Provision when sample is not divided.
16. Provision for sending article to the analyst through the post office.

17. Person refusing to sell any article to any officer liable to penalty.
18. Form of the certificate.
19. Quarterly report of the analyst. Public, 63.

#### PROCEEDINGS AGAINST OFFENDERS.

20. Proceedings against offenders.
21. Certificate of analyst *prima facie* evidence for the prosecution, but analyst to be called if required. Defendant and his wife may be examined.
22. Power to Justices to have articles of food and drug analyzed.
23. Appeal to Quarter Sessions.
24. In any prosecution defendant to prove that he is protected by exception of provision.
25. Defendant to be discharged if he prove that he bought the article in the same state as sold, and with a warranty. No costs except on issues proved against him.
26. Application of penalties.
27. Punishment for forging certificate or warranty; for willful misapplication of warranty; for false warranty; for false label.
28. Proceedings by indictment and contracts not to be affected.

#### EXPENSES OF EXECUTING THE ACT.

29. Expenses of executing act.

## SPECIAL PROVISION AS TO TEA.

30. Tea to be examined by the customs on importation.
31. Interpretation of act.
32. Provision for the liberty of a cinque port.
33. Application of the act to Scotland.
34. Interpretation of terms in application of act to Ireland.
35. Commencement of the act.
36. Title of the act. Schedule.

## CHAPTER 63.

AN ACT to repeal the Adulteration of Food Acts, and to make better provision for the sale of food and drugs in a pure state. 11 Aug. 1875.

*Whereas*, it is desirable that the acts now in force relating to the adulteration of food should be repealed, and that the law regarding the sale of food and drugs in a pure and genuine condition should be amended.

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords, Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Repeal of stat-  
utes. I. From the commencement of this act the statutes of the twenty-third and twenty-fourth of Victoria; chapter eighty-four of the thirty-first and thirty-second of Victoria; chapter one hundred and

twenty-one, section twenty-four, of the thirty-third and thirty-fourth of Victoria; chapter twenty-six, section three, and of the thirty-fifth and thirty-sixth of Victoria, chapter seventy-four, shall be repealed, except in regard to any appointment made under them and not then determined, and in regard to any offense committed against them, or any prosecution or other act commenced and not concluded or completed, and any payment of money then due in respect of any provision thereof.

2. The term "Food" shall include every article used for food or drink by man, other than drugs or water. Interpretation of words.

The term "Drug" shall include medicine for internal or external use.

The term "County" shall include every county, riding, and division, as well as every county of a city or town not being a borough.

The term "Justices" shall include any police and stipendiary magistrate invested with the powers of a Justice of the Peace in England, and any Divisional Justices in Ireland. *Public, 63.*

#### DESCRIPTION OF OFFENSES.

3. No person shall mix, color, stain, or powder, or order or permit any other person to mix, color, stain, or powder, any article of food with any ingredient or material so as to render the article injurious to health, with intent that the same

A. D. 1875.  
Prohibition of  
the mixing of  
injurious ingre-  
dients, and of  
selling the same.

may be sold in that state, and no person shall sell any such article so mixed, colored, stained, or powdered, under a penalty in each case not exceeding fifty pounds for the first offense; every offense, after a conviction for a first offense, shall be a misdemeanor, for which the person, on conviction, shall be imprisoned for a period not exceeding six months with hard labor.

Prohibition of the mixing of drugs with injurious ingredients and of selling the same. 4. No person shall, except for the purpose of compounding, as hereinafter described, mix, color, stain, or powder, or order or permit any other person to mix, color, stain, or powder, any drug with any ingredient or material so as to affect injuriously the quality or potency of such drug, with intent that the same may be sold in that state, and no person shall sell any such drug so mixed, colored, stained, or powdered, under the same penalty in each case respectively as in the preceding section for a first and subsequent offense.

Exemption in case of proof of absence of knowledge. 5. Provided that no person shall be liable to be convicted under either of the two last foregoing sections of this act, in respect of the sale of any article of food, or of any drug, if he shows to the satisfaction of the justice or court before whom he is charged that he did not know of the article of food or drug sold by him being so mixed, colored, stained, or powdered, as in either of those sections mentioned, and that he could not with reasonable diligence have obtained that knowledge.

6. No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, under a penalty not exceeding twenty pounds ; provided that an offense shall not be deemed to be committed under this section in the following cases ; that is to say :

1. Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality thereof.
2. Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent.
3. Where the food or drug is compounded as in this act mentioned.
4. Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.
7. No person shall sell any compound article of food or compounded drug which is not composed of ingredients in accordance

Prohibition of the sale of articles of food and of drugs not of the proper nature, substance, and quality.

Provision for the sale of compounded articles of food and compounded drugs.

with the demand of the purchaser, under a penalty not exceeding twenty pounds.

Protection from  
offenses by giv-  
ing of label.

8. Provided that no person shall be guilty of any such offense as aforesaid, in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently to increase its bulk, weight, or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice, by a label distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed.

Prohibition of the  
abstraction of any  
part of an article  
of food before  
sale, and selling  
without notice.

9. No person shall, with the intent that the same may be sold in its altered state without notice, abstract from an article of food any part of it so as to affect injuriously its quality, substance, or nature, and no person shall sell any article so altered without making disclosure of the alteration, under a penalty in each case not exceeding twenty pounds.

#### APPOINTMENT AND DUTIES OF ANALYSTS, AND PROCEEDINGS TO OBTAIN ANALYSIS.

Appointment of  
Analysts.

10. In the city of London and the liberties thereof, the commissioners of sewers of the city of London and the liberties thereof, and in all other parts of the metropolis, the vestries and district boards acting in execution of the act for the better local man-

agement of the metropolis, the court of quarter sessions of every county, and the town council of every borough having a separate court of quarter sessions, or having under any general or local act of parliament or otherwise a separate police establishment, may, as soon as convenient after the passing of this act, where no appointment has been hitherto made, and in all cases as and when vacancies in the office occur, or when required so to do by the Local Government Board, shall, for their respective city, districts, counties, or boroughs, appoint one or more persons possessing competent knowledge, skill, and experience, as analysts of all articles of food and drugs sold within the said city, metropolitan districts, counties, or boroughs, and shall pay to such analysts such remuneration as shall be mutually agreed upon, and may remove him or them as they shall deem proper ; but such appointments and removals shall at all times be subject to the approval of the Local Government Board, who may require satisfactory proof of competency to be supplied to them, and may give their approval absolutely or with modifications as to the period of the appointment and removal or otherwise ; provided, that no person shall hereafter be appointed an analyst for any place under this section who shall be engaged directly or indirectly in any trade or business connected with the sale of food or drugs in such place.

In Scotland the like powers shall be conferred, and the like duties shall be imposed upon the Commissioners

of Supply at their ordinary meetings for counties, and the Commissioners or Boards of Police, or where there are no such commissioners or boards, upon the town councils for boroughs within their several jurisdictions; provided that one of Her Majesty's principal secretaries of state in Scotland shall be substituted for the Local Government Board of England.

In Ireland the like powers and duties shall be conferred and imposed respectively upon the grand jury of every county and town council of every borough; provided that the Local Government Board of Ireland shall be substituted for the Local Government Board of England.

Town council of a borough may engage the analyst of another borough or of the county.

11. The town council of any borough may agree that the analyst appointed by any neighboring borough, or for the county in which the borough is situated, shall act for their borough during such time as the said council shall think proper, and shall make due provision for the payment of his remuneration, and if such analyst shall consent, he shall during such time be the analyst for such borough for the purposes of this act.

Power of purchaser of an article of food to have it analyzed.

12. Any purchaser of an article of food or of a drug in any place being a district, county, city, or borough where there is any analyst appointed under this or any act hereby repealed, shall be entitled, on payment to such analyst of a sum not exceeding ten shillings and sixpence, or if there be

no such analyst then acting for such place, to the analyst of another place, of such sum as may be agreed upon between such person and the analyst, to have such article analyzed by such analyst, and to receive from him a certificate of the result of his analysis.

13. Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this act, may procure any sample of food or drugs, and if he suspect the same to have been sold to him contrary to any provision of this act, shall submit the same to be analyzed by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place to the analyst of another place, and such analyst shall, upon receiving payment as is provided in the last section, with all convenient speed analyze the same and give a certificate to such officer, wherein he shall specify the result of the analysis.

14. The person purchasing any article with the intention of submitting the same to analysis shall, after the purchase shall have been completed, forthwith notify to the seller or his agent selling the article his intention to have the same analyzed by the public analyst, and shall offer to divide the article into three parts to be then and there separated, and each part

Officer named to obtain a sample of food or drug to submit to analyst.

Provision for dealing with the sample when purchased.

to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, proceed accordingly, and shall deliver one of the parts to the seller or his agent.

He shall afterwards retain one of the said parts for future comparison, and submit the third part, if he deems it right to have the article analyzed, to the analyst.

Provision when sample is not divided.

15. If the seller or his agent do not accept the offer of the purchaser to divide the article purchased in his presence, the analyst receiving the article for analysis shall divide the same into two parts, and shall seal or fasten up one of those parts, and shall cause it to be delivered, either upon receipt of the sample or when he supplies his certificate to the purchaser, who shall retain the same for production in case proceedings shall afterwards be taken in the matter.

Provision for sending article to the analyst through the post office.

16. If the analyst do not reside within two miles of the residence of the person requiring the article to be analyzed, such article may be forwarded to the analyst through the post office as a registered letter, subject to any regulations which the postmaster-general may make in reference to the carrying and delivery of such article, and the charge for the postage of such article shall be deemed one of the charges of this act or of the prosecution, as the case may be.

Person refusing to sell any article to any officer liable to penalty.

17. If any such officer, inspector, or constable as above described, shall apply to

purchase any article of food or any drug exposed to sale, or on sale by retail on any premises or in any shop or stores, and shall tender the price for the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer, inspector, or constable, such person shall be liable to a penalty not exceeding ten pounds.

18. The certificate of the analysis shall be <sup>Form of the certificate.</sup> in the form set forth in the schedule hereto, or to the like effect.

19. Every analyst appointed under any act <sup>Quarterly report of the analyst.</sup> hereby repealed, or this act, shall report quarterly to the authority appointing him the number of articles analyzed by him under this act during the foregoing quarter, and shall specify the result of each analysis and the sum paid to him in respect thereof, and such report shall be presented at the next meeting of the authority appointing such analyst, and every such authority shall transmit annually to the Local Government Board, at such time and in such form as the board shall direct, a certified copy of such quarterly report.

#### PROCEEDINGS AGAINST OFFENDERS.

20. When the analyst having analyzed <sup>Proceedings against offend-</sup> any article shall have given his certificate of <sup>ers.</sup> the result, from which it may appear that an offense

against some one of the provisions of this act has been committed, the person causing the analysis to be made may take proceedings for the recovery of the penalty herein imposed for such offense, before any justices in petty sessions assembled, having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser, in a summary manner.

Every penalty imposed by this act, shall be recovered in England in the manner prescribed by the eleventh and twelfth of Victoria, chapter forty-three. In Ireland such penalties and proceedings shall be recoverable, and may be taken with respect to the police district of Dublin metropolis, subject and according to the provisions of any act regulating the powers and duties of justices of the peace for such district, or of the police of such district; and with respect to other parts of Ireland, before a justice or justices of the peace sitting in petty sessions, subject and according to the provisions of "The Petty Sessions (Ireland) Act, 1851," and any act amending the same.

Every penalty herein imposed may be reduced or mitigated according to the judgment of the justices.

Certificate of analyst *prima facie* evidence for the prosecution, but analyst to be called if required. Defendant and his wife may be examined.

21. At the hearing of the information in such proceeding, the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness, and the parts of the articles retained

by the person who purchased the article shall be produced, and the defendant may, if he think fit, tender himself and his wife to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly.

22. The justices before whom any complaint may be made, or the court before whom any appeal may be heard under this act, may, upon the request of either party, in their discretion cause any article of food or drug to be sent to the Commissioners of Inland Revenue, who shall thereupon direct the chemical officers of their department at Somerset House, to make the analysis, and give a certificate to such justices of the result of the analysis; and the expense of such analysis shall be paid by the complainant or the defendant as the justices may by order direct.

Power to justices to have articles of food and drug analyzed.

23. Any person who has been convicted of any offense, punishable by any act hereby repealed, or by this act by any justices, may appeal in England to the next general or quarter sessions of the peace, which shall be held for the city, county, town, or place wherein such conviction shall have been made, provided that such person enter into a recognizance within three days next after such conviction, with two sufficient sureties, conditioned to try such appeal, and to be forthcoming to abide the judgment and determination of the court at such general or quarter sessions, and to pay such costs as shall be by such court awarded; and the justices before whom such conviction shall

Appeal to quarter sessions.

be had are hereby empowered and required to take such recognizance; and the court at such general or quarter sessions are hereby required to hear and determine the matter of such appeal, and may award such costs to the party appealing or appealed against as they or he shall think proper.

In Ireland any person who has been convicted of any offense punishable by this act, may appeal to the next court of quarter sessions, to be held in the same division of the county where the conviction shall be made by any justice or justices in any petty sessions district, or to the recorder at his next sessions, where the conviction shall be made by the divisional justices in the police district of Dublin metropolis, or to the recorder of any corporate or borough town, when the conviction shall be made by any justice or justices in such corporate or borough town (unless when any such sessions shall commence within ten days from the date of any such conviction, in which case, if the appellant sees fit, the appeal may be made to the next succeeding sessions to be held for such division or town), and it shall be lawful for such court of quarter sessions or recorder, as the case may be, to decide such appeal, if made in such form and manner, and with such notices as are required by the said petty sessions acts respectively hereinbefore mentioned as to appeals against orders made by justices at petty sessions, and all the provisions of the said petty sessions acts respectively, as to

making appeals and as to executing the orders made on appeal, or the original orders where the appeals shall not be duly prosecuted, shall also apply to any appeal made under this act.

24. In any prosecution under this act, where the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exception or provision contained in this act, it shall be incumbent upon him to prove the same.

In any prosecution defendant to prove that he is protected by exception or provision.

25. If the defendant in any prosecution under this act prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty to that effect, that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defense.

Defendant to be discharged if he prove that he bought the article in the same state as sold, and with a warranty. No costs except on issues proved against him.

26. Every penalty imposed and recovered under this act shall be paid in the case of a prosecution by any officer, inspector, or constable of the authority who shall have appointed an analyst or agreed to the acting of an analyst within their district, to such

Application of penalties.

officer, inspector, or constable, and shall be by him paid to the authority for whom he acts, and be applied towards the expenses of executing this act, any statute to the contrary notwithstanding; but in the case of any other prosecution the same shall be paid and applied in England according to the law regulating the application of penalties for offenses punishable in a summary manner, and in Ireland in the manner directed by the Fines Act, Ireland, 1851, and the acts amending the same.

Punishment  
for forging cer-  
tificate or war-  
ranty.

27. Any person who shall forge, or shall utter, knowing it to be forged for the purposes of this act, any certificate or any writing purporting to contain a warranty, shall be guilty of a misdemeanor, and be punishable on conviction by imprisonment for a term of not exceeding two years with hard labor.

For willful mis-  
application of  
warranty.

Every person who shall willfully apply to an article of food, or a drug, in any proceedings under this act, a certificate or warranty given in relation to any other article or drug, shall be guilty of an offense under this act, and be liable to a penalty not exceeding twenty pounds.

For false war-  
ranty.

Every person who shall give a false warranty in writing to any purchaser in respect of an article of food or a drug sold by him as principal or agent, shall be guilty of an offense under this act, and be liable to a penalty not exceeding twenty pounds.

For false label.

And every person who shall willfully give a

label with any article sold by him, which shall falsely describe the article sold, shall be guilty of an offense under this act, and be liable to a penalty not exceeding twenty pounds.

28. Nothing in this act contained shall affect the power of proceeding by indictment or take away any other remedy against any offender under this act, or in any way interfere with contracts and bargains between individuals, and the rights and remedies belonging thereto.

Provided that in any action brought by any person for a breach of contract on the sale of any article of food or of any drug, such person may recover a loan, or in addition to any other damages recoverable by him, the amount of any penalty in which he may have been convicted under this act, together with the costs paid by him upon such conviction and those incurred by him in and about his defense thereto, if he prove that the article or drug the subject of such conviction was sold to him as and for an article or drug of the same nature, substance, and quality as that which was demanded of him, and that he purchased it not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased it: the defendant in such action being nevertheless at liberty to prove that the conviction was wrongful, or that the amount of costs awarded or claimed was unreasonable.

## EXPENSES OF EXECUTING THE ACT.

Expenses of executing act. 29. The expenses of executing this act shall be borne in the city of London and the liberties thereof by the consolidated rates raised by the commissioners of sewers of the city of London and the liberties thereof, and in the rest of the metropolis by any rates or funds applicable to the purposes of the act for the better local management of the metropolis, and otherwise as regards England, in counties by the county rate, and in boroughs by the borough fund or rate; and as regards Ireland, in counties by the Grand Jury Cess, and in boroughs by the borough fund or rate; all such expenses payable in any county out of Grand Jury Cess shall be paid by the treasurer of such county; and,

The Grand Jury of any such county shall, at any assizes at which it is proved that any such expenses have been incurred or paid without previous application to presentment sessions, present to be raised off and paid by such county the moneys required to defray the same.

## SPECIAL PROVISION AS TO TEA.

Tea to be examined by the customs on importation. 30. From and after the first day of January one thousand eight hundred and seventy-six,

all tea imported as merchandise into and landed at any port in Great Britain or Ireland shall be subject to examination by persons to be appointed by the commissioners of customs, subject to the approval of

the treasury, for the inspection and analysis thereof, for which purpose samples may, when deemed necessary by such inspectors, be taken, and with all convenient speed be examined by the analysts to be so appointed; and if upon such analysis the same shall be found to be mixed with other substances or exhausted tea, the same shall not be delivered unless with the sanction of the said commissioners, and on such terms and conditions as they shall see fit to direct, either for home consumption or for use as ship's stores or for exportation; but if on such inspection and analysis it shall appear that such tea is in the opinion of the analyst unfit for human food, the same shall be forfeited and destroyed or otherwise disposed of in such manner as the said commissioners may direct.

31. Tea to which the term "exhausted" is applied in this act, shall mean and include any tea which has been deprived of its proper quality, strength, or virtue by steeping, infusion, decoction, or other means.

32. For the purposes of this act every liberty of a cinque port not comprised within the jurisdiction of a borough shall be part of the county in which it is situated, and subject to the jurisdiction of the justices of such county.

33. In the application of this act to Scotland, the following provisions shall have effect:

1. The term "misdemeanor" shall mean "a crime or offense."

2. The term "defendant" shall mean "defender" and include "respondent."
3. The term "information" shall include "complaint."
4. This act shall be read and construed as if for the term "justices," wherever it occurs therein, the term "sheriff" were substituted:
5. The term "sheriff" shall include "sheriff's substitute."
6. The term "borough" shall mean any royal burgh, and any burgh returning or contributing to return a member to parliament.
7. The expenses of executing this act shall be borne in Scotland in counties, by the county general assessment, and in burghs, by the police assessment.
8. This act shall be read and construed as if for the expression "the Local Government Board," wherever it occurs therein, the expression "one of Her Majesty's principal secretaries of state" were substituted.
9. All penalties provided by this act to be recovered in a summary manner shall be recovered before the sheriff of the county in the sheriff's court, or at the option of the person seeking to recover the same in the police court, in any place where a sheriff officiates as a police magistrate under the provisions of "the Summary Procedure Act, 1864," or of the police act in force for the time in any place in which a sheriff officiates as aforesaid, and all the jurisdiction, powers, and authorities necessary for this purpose are hereby conferred on sheriffs.

Every such penalty may be recovered at the instance of the procurator fiscal of the jurisdiction, or of the person who caused the analysis to be made from which it appeared that an offense had been committed against some one of the provisions of this act.

Every penalty imposed and recovered under this act shall be paid to the clerk of court, and by him shall be accounted for and paid to the treasurer of the county general assessment, or the police assessment of the burgh, as the sheriff shall direct.

10. Every penalty imposed by this act may be reduced or mitigated according to the judgment of the sheriff.

11. It shall be competent to any person aggrieved by any conviction by a sheriff in any summary proceeding under this act to appeal against the same to the next Circuit Court, or where there are no Circuit Courts to the High Court of Judiciary at Edinburgh, in the manner prescribed by such of the provisions of the act of the twentieth year of the reign of King George the Second, chapter forty-three, and any acts amending the same, as relate to appeals in matters criminal, and by and under the rules, limitations, conditions, and restrictions contained in the said provisions.

34. In the application of this act to Ireland: Interpretation of terms in application of act to Ireland.

The term "borough" shall mean any borough subject to the act of the session of the third and fourth years of the reign of her present Majesty, chapter one hun-

dred and eight, entitled "An Act for the regulation of municipal corporations in Ireland."

The term "county" shall include a county of a city and a county of a town not being a borough.

The term "assizes" shall, with respect to the county of Dublin, mean "presenting term."

The term "treasurer of the county" shall include any person or persons or bank in any county performing duties analogous to those of the treasurer of the county in counties, and, with respect to the county of Dublin, it shall mean the finance committee.

The term "police constable" shall mean, with respect to the police district of Dublin metropolis, constable of the Dublin metropolitan police, and with respect to any other part of Ireland, constable of the Royal Irish Constabulary.

Commencement of the act. 35. This act shall commence on the first day of October, one thousand eight hundred and seventy-five.

Title of the act. 36. This act may be cited as "The sale of Food and Drugs Act, 1875."

## SCHEDULE.

## FORM OF CERTIFICATE.

To

I, the undersigned, public analysist for the , do hereby certify that I received on the day of , 18 , from \* , a sample of for analysis (which then weighed † ), and have analyzed the same, and declare the result of my analysis to be as follows :

I am of opinion that the same is a sample of genuine or,

I am of opinion that the said sample contained the parts as under, or the percentage of foreign ingredients as under.

## Observations.

As witness my hand, this day of

A. B.,

At .

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\* Here insert the name of the person submitting the article for analysis, and also the name of the person delivering the sample.

† When the article cannot be conveniently weighed, this passage may be erased, or the blank may be left unfilled.

Here the analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article portable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether in excess of what is ordinary, or otherwise, and whether the ingredients or materials mixed are or are not injurious to health.

In the case of a certificate regarding milk, butter, or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

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#### NOTE.

Under the operation of this law, now being amended by Parliament, the following substance of rulings made by British courts are loosely given from memory, to show some of the difficulties met by such laws in large communities.

One court ruled that the sale of diluted gin, though proven, was not to the hurt of the consumer, but that the less gin he took the better for him. Therefore, the court failed to convict.

Convictions were repeatedly had for the sale of "milk of sulphur," with 50 to 60 per cent. of plaster-of-paris in it, and on various pleas the fines imposed varied with



the character of the prosecution from sixpence to five pounds.

Convictions were had for diluted sweet spirits of nitre, and on various pleas showing superior expert ability in defense, only nominal fines were imposed.

Numerous convictions and reversions were had upon flour, butter, and milk, most of them turning upon points of delicate technical construction of the law, and of defective or clashing expert testimony. Much difficulty has been encountered for want of standards for comparison, and in regard to the value of different processes of analysis, and Somerset House, as the appellate authority in analysis, has repeatedly reversed decisions of analysts, presumably from lack of proper ability and skill in the latter.

Finally, complaints and prosecutions by consumers having become fewer, presumably by reason of the trouble, time, and expense involved, the analysts took the initiative—bought their own samples for analysis, and entered upon prosecution where necessary. Then came the sweeping decision and failure to convict in such cases, on the ground that an adulterated article sold to an analyst for examination, was not sold to the hurt of the purchaser as required by the law for conviction. This decision was reaffirmed by an appellate court of high authority, but has just now been reopened and rearugued and temporarily reversed pending the action of Parliament in amending the law.



